

suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on March 30, 1995: Yeas 144, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 1583 on May 19, 1995: Yeas 123, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 18, 1995: Yeas 31, Nays 0.

Approved June 5, 1995.

Effective July 1, 1995.

CHAPTER 309

H.B. No. 1989

AN ACT

relating to the underground storage of appropriated water incidental to a beneficial use.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that:

(1) the underground storage of appropriated water, incidental to a beneficial use, is a beneficial use of water;

(2) the use of aquifers for storage of appropriated water:

(A) enhances the conservation and protection of appropriated water by minimizing seepage and evaporation losses;

(B) reduces the incidental environmental impacts associated with the construction of conventional water storage facilities such as aboveground reservoirs; and

(C) enhances and protects groundwater resources;

(3) the underground storage of appropriated water maximizes the conservation and beneficial use of water resources;

(4) the storage of appropriated water in aquifers recognizes existing property rights, including the rights of a landowner in groundwater;

(5) the storage of appropriated water in aquifers recognizes the authority and jurisdiction of an underground water conservation district;

(6) the use of aquifers for storage of appropriated water may reduce a portion of the economic burden on taxpayers and utility ratepayers associated with the construction of conventional water storage facilities;

(7) the successful storage of appropriated water underground has been demonstrated in Kerr County by the Upper Guadalupe River Authority in the Hosston-Sligo Aquifer; and

(8) the Texas Natural Resource Conservation Commission and the Texas Water Development Board are encouraged to evaluate additional aquifers within the state to identify the potential for storage of appropriated water underground to maximize and enhance the future availability and beneficial use of the water resources of the state.

SECTION 2. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.153, 11.154, and 11.155 to read as follows:

Sec. 11.153. PILOT PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for pilot demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use in the following aquifers in the specified counties:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County; and

(4) the Gulf Coast aquifer in Cameron and Hidalgo counties.

(b) A permit described by Subsection (a) must be for only the duration of the pilot project to provide the commission and the board further opportunity to evaluate the storage of appropriated water in aquifers for subsequent retrieval and beneficial use.

(c) At the conclusion of a pilot project, a permit holder may file an appropriate application for a permit or permit amendment. After considering the success of the project and the criteria set out in Section 11.154, the commission shall determine whether to issue a permit or permit amendment authorizing the continued storage of appropriated water in the aquifer.

(d) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999.

(e) The board shall participate in the study of the pilot projects authorized by Subsection (a). The pilot projects are eligible for grants from the water loan assistance fund established by Section 15.101. The board may authorize use of money from the research and planning fund established by Section 15.402 to participate in the study of pilot projects.

Sec. 11.154. PERMITS TO STORE APPROPRIATED WATER IN AQUIFERS. (a) An application filed with the commission to undertake a pilot project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by Chapter 52, that is under the jurisdiction of an underground water conservation district:

(1) the applicant shall:

(A) provide a copy of the application to each underground water conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with the districts that have jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district;

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(D) comply with the rules governing the injection, storage, or withdrawal of appropriated water stored in the reservoir or subdivision that are adopted by a district that has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement the applicant reaches with a district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) On completion of a pilot project and receipt of an appropriate application for a permit or an amendment to an existing permit, the commission shall evaluate the success of the pilot project for purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use. The commission shall consider whether:

(1) the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property; or

(B) require treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(2) the water stored in the receiving aquifer can be successfully harvested from the aquifer for beneficial use; and

(3) the permit holder has provided evidence that reasonable diligence will be used to protect the water stored in the receiving aquifer from unauthorized withdrawals to the extent necessary to maximize the permit holder's ability to retrieve and beneficially use the stored water without experiencing unreasonable loss of appropriated water.

(d) In making its evaluation under Subsection (c), the commission may consider all relevant facts, including:

(1) the location and depth of the aquifer in which the stored water is located;

(2) the nature and extent of the surface development and activity above the stored water;

(3) the permit holder's ability to prevent unauthorized withdrawals by contract or the exercise of the power of eminent domain;

(4) the existence of an underground water conservation district with jurisdiction over the aquifer storing the water and the district's ability to adopt rules to protect stored water; and

(5) the existence of any other political subdivision or state agency authorized to regulate the drilling of wells.

(e) A permit to store appropriated water in an underground water reservoir or subdivision, as defined by Chapter 52, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with an underground water conservation district that has jurisdiction over the reservoir or subdivision, if any; and

(2) each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage; and

(B) the amount of water recaptured for use.

Sec. 11.155. AQUIFER STORAGE PILOT PROJECT REPORTS. *(a) On completion of each pilot project, the board and the commission jointly shall:*

(1) prepare a report evaluating the success of the project; and

(2) provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers identified in Section 11.153(a);

(2) areas designated by the commission as "critical areas" under Section 52.053; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

(c) Not later than January 1 of each odd-numbered year, the board shall prepare and provide to the legislature a report that includes at least the following information:

(1) the progress of the pilot projects authorized under this subchapter and of any related project;

(2) the results of the board's studies of the other aquifers of the state during the preceding biennium; and

(3) the anticipated appropriation from general revenues necessary to investigate other aquifers in the state during the upcoming biennium.

SECTION 3. (a) The change in law made by this Act applies only to an application made on or after the effective date of this Act for a permit or a permit amendment for a pilot project to appropriate water and to store appropriated water in an aquifer identified in this Act.

(b) A permit issued by the commission authorizing the storage of appropriated water in an aquifer incident to a beneficial use before the effective date of this Act or an application for a permit or permit amendment to appropriate water that includes authorization to store appropriated water in an underground structure filed before the effective date of this Act is not affected by the changes in law made by this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 28, 1995: Yeas 136, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 1989 on May 18, 1995: Yeas 144, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 15, 1995: Yeas 31, Nays 0.

Approved June 5, 1995.

Effective June 5, 1995.

CHAPTER 310

H.B. No. 2015

AN ACT

relating to statutory changes to obtain delegation to Texas of the National Pollutant Discharge Elimination System.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter C, Chapter 5, Water Code, is amended by adding Section 5.053, as effective upon delegation of NPDES permit authority, to read as follows:

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. (a) A person is not eligible to serve on the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(b) In addition to the eligibility requirements in Subsection (a) of this section, persons who are appointed to serve on the commission for terms which expire after August 31, 2001, must comply at the time of their appointment with the eligibility requirements established under 33 U.S.C. Sections 1251-1387, as amended.

SECTION 2. Section 26.017, Water Code, is amended to read as follows:

Sec. 26.017. COOPERATION. The commission shall: